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Kevin L. Smith

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MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Demitrius Taylor appeals his conviction for Resisting Law Enforcement,¹ a class A misdemeanor. Specifically, Taylor argues that the State presented insufficient evidence that he acted forcibly during his encounter with law enforcement officials. Finding no error, we affirm the judgment of the trial court.

FACTS

On June 13, 2007, Greenfield Police Detective Randy Ratliff assisted Greenfield Police Lieutenant John Jesture and Indianapolis Police Officer Jeff Parmelee in executing a search warrant for Taylor's vehicle. Taylor was detained for questioning, placed in handcuffs, and transported to another location in Detective Ratliff's vehicle. While he was being transported, Taylor came free of the handcuffs.² Detective Ratliff radioed the other officers for assistance and grabbed Taylor's left wrist. When the other officers arrived, Detective Ratliff released Taylor and instructed him to place his hands on his head and listen to the other officers.

Officer Parmelee attempted to remove Taylor from Detective Ratliff's vehicle, but Taylor resisted by pulling away. Another officer eventually helped Officer Parmelee remove Taylor from the vehicle and ordered him to get on the ground. Taylor refused and "resisted as he was taken to the ground." Tr. p. 13. Officer Parmelee ordered Taylor to place his hands behind his back so that he could be handcuffed; however, Taylor

¹ Ind. Code § 35-44-3-3.

² Officer Ratliff testified that it was unclear whether Taylor broke the handcuffs or if they malfunctioned. Tr. p. 11-12.

placed his hands underneath his body. Two officers unsuccessfully attempted to remove Taylor's arms from underneath his body. After struggling with him, Officer Parmelee employed his Taser and Taylor ultimately complied.

The State charged Taylor with class A misdemeanor resisting law enforcement on June 13, 2007. A bench trial was held on September 11, 2007, and the trial court found Taylor guilty as charged. Taylor now appeals.

DISCUSSION AND DECISION

Taylor argues that the State presented insufficient evidence to sustain his conviction. Specifically, he argues that “[t]here was no evidence that [he] used any force or violence against any law enforcement officer on the afternoon of June 13, 2007.” Appellant's Br. p. 6.

To convict Taylor of class A misdemeanor resisting law enforcement, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally forcibly resisted, obstructed, or interfered with a law enforcement officer while the officer was lawfully engaged in the execution of his duties. I.C. § 35-44-3-3. When addressing sufficiency of the evidence challenges, we neither reweigh the evidence nor judge the credibility of the witnesses. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). We consider only the probative evidence and reasonable inferences therefrom that support the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). If there is conflicting evidence, we consider that evidence only in the light most favorable to the judgment. Id. The evidence is sufficient if an inference may reasonably be drawn from it to support the judgment. Id. at 147.

Taylor alleges that the State presented insufficient evidence that he forcibly resisted law enforcement. A person forcibly resists ““when strong, powerful, violent means are used to evade a law enforcement official’s rightful exercise of his or her duties.”” Guthrie v. State, 720 N.E.2d 7, 9 (Ind. Ct. App. 1999) (quoting Spangler v. State, 607 N.E.2d 720, 723 (Ind. 1993)). Mere passive resistance is not sufficient to sustain a conviction for resisting law enforcement. Guthrie, 720 N.E.2d at 9.

Our Supreme Court interpreted the force requirement in Spangler, holding that the forcible element of the crime requires “some form of violent action toward another.” Spangler, 607 N.E.2d at 724. However, in Johnson v. State, we noted that while discussing political expression, our Supreme Court cited Spangler and provided that ““an individual who directs strength, power or violence towards police officers or who makes a threatening gesture or movement in their direction, may properly be charged with [resisting law enforcement].”” 833 N.E.2d 516, 519 (Ind. Ct. App. 2005) (quoting Price v. State, 622 N.E.2d 954, 963 n.14 (Ind. 1993) (emphasis in original)). Thus, we held that “until we are instructed otherwise by our Supreme Court, we see no reason to apply what appears to be an overly strict definition of ‘forcibly resist’ when the facts in Spangler established that an individual did no more than passively resist by walking away” Johnson, 833 N.E.2d at 519 (affirming defendant’s conviction for resisting law enforcement because he had turned and pushed away with his shoulders, refused to get into the officers’ vehicle, and stiffened up, requiring officers to exert force to place him in the vehicle).

Taylor resisted Officer Parmelee's attempts to remove him from Detective Ratliff's vehicle by "pulling away." Tr. p. 24-25. As a result, another officer had to assist Officer Parmelee in removing Taylor from the vehicle. Taylor refused to get on the ground and "resisted as he was taken to the ground." Id. at 13. After he was on the ground, Officer Parmelee ordered him to place his hands behind his back, but Taylor refused and placed his hands underneath his body so that he could not be handcuffed. Id. at 13, 25. Two officers unsuccessfully attempted to remove Taylor's hands from underneath his body. Id. at 15-16. After concluding that Taylor was "interfering with [his] job[.]" Officer Parmelee used a Taser to force him to comply. Id. at 25.

Taylor used more force than the defendant whose conviction we upheld in Johnson. He resisted the officers' attempts to remove him from a vehicle, resisted orders to get on the ground, and placed his hands underneath his body so that he could not be handcuffed. As a result of his actions, numerous officers had to employ physical force. While Taylor argues that his actions were not violent, we conclude that the State presented sufficient evidence for a reasonable factfinder to find Taylor guilty of resisting law enforcement.

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.